

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

PIERRE BRAZEAU, ET AL.,)	AU:21-CV-00751-DAE
)	
Plaintiffs,)	
)	
v.)	AUSTIN, TEXAS
)	
CASSAVA SCIENCES, INC., ET AL.)	
)	
Defendants.)	AUGUST 1, 2024

TRANSCRIPT OF MOTIONS HEARING/STATUS CONFERENCE
BEFORE THE HONORABLE DAVID A. EZRA

APPEARANCES:

FOR THE PLAINTIFFS: JOE KENDALL
KENDALL LAW GROUP
3811 TURTLE CREEK BOULEVARD, SUITE 825
DALLAS, TEXAS 75219

KEVIN A. LAVELLE
DANIEL S. DROSMAN
RACHEL L. JENSEN
ROBBINS GELLER RUDMAN & DOWD LLP
655 WEST BROADWAY, SUITE 1900
SAN DIEGO, CALIFORNIA 92101

FOR THE DEFENDANTS: GREGG JEFFREY COSTA
LLOYD S. MARSHALL
GIBSON DUNN & CRUTCHER
811 MAIN STREET, SUITE 3000
HOUSTON, TEXAS 77002

MONICA K. LOSEMAN
MICHAEL SCOTT CAMPBELL
GIBSON, DUNN
1801 CALIFORNIA STREET, SUITE 4200
DENVER, COLORADO 80202

C SHAWN CLEVELAND
BAKER & HOSTETLER LLP
2850 N. HARWOOD STREET, SUITE 1100
DALLAS, TEXAS 75201

1 COURT REPORTER: ARLINDA RODRIGUEZ, CSR
2 501 WEST 5TH STREET, SUITE 4152
3 AUSTIN, TEXAS 78701
4 (512) 391-8791
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24 Proceedings recorded by computerized stenography, transcript
25 produced by computer.

ARLINDA L. RODRIGUEZ, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (AUSTIN)

09:10:05 1 THE COURT: All right. So unless you would
09:10:07 2 like me to hold off and you wish to argue this morning, I
09:10:09 3 am more than happy to grant your motion at this time and
09:10:13 4 excuse you.

09:10:16 5 MR. COSTA: Well, we're still representing the
09:10:18 6 company --

09:10:18 7 THE COURT: Yeah.

09:10:19 8 MR. COSTA: -- Your Honor. So it would just be
09:10:20 9 as to the individuals we're withdrawing.

09:10:22 10 THE COURT: You're withdrawing only as to the
09:10:24 11 individuals?

09:10:25 12 MR. COSTA: Exactly.

09:10:25 13 THE COURT: Oh. I thought you were withdrawing
09:10:26 14 entirely.

09:10:27 15 MR. COSTA: No. We're still right in the thick
09:10:29 16 of things here for Cassava. It's just the individual
09:10:33 17 defendants.

09:10:33 18 THE COURT: Well, I'm not kicking you out.

09:10:35 19 MR. COSTA: I appreciate that.

09:10:36 20 THE COURT: All right. So I am granting your
09:10:40 21 motion to withdraw with respect to the individuals.

09:10:50 22 MR. COSTA: Thank you.

09:10:50 23 THE COURT: Okay. This is a motion to stay.
09:10:55 24 Who's arguing?

09:10:57 25 MR. COSTA: It's our motion, Your Honor. We

09:10:59 1 did -- I know the Court had sent out a sealed request for
09:11:02 2 information about the status of discovery, et cetera.

09:11:06 3 THE COURT: Yeah. Unfortunately, there was a
09:11:08 4 mix-up in the clerk's office. And I was wondering why
09:11:12 5 nobody was responding, because we have very good law
09:11:16 6 firms here and not firms that would normally simply look
09:11:20 7 the other way. And, boom, we find out that it wasn't
09:11:24 8 your fault at all, it was the clerk's fault. And I
09:11:28 9 apologize for that. And so, yeah, I'd like to know the
09:11:33 10 status.

09:11:34 11 MR. COSTA: Right. And so -- and Ms. Loseman
09:11:41 12 is prepared to address that --

09:11:41 13 THE COURT: All right.

09:11:41 14 MR. COSTA: -- to start off.

09:11:44 15 MS. LOSEMAN: Good morning, Your Honor. May I
09:11:45 16 address you from here?

09:11:46 17 THE COURT: Yes.

09:11:46 18 MS. LOSEMAN: Thank you. We thought it would
09:11:49 19 be helpful, Your Honor, to start with an update on recent
09:11:52 20 events concerning the company and how those recent events
09:11:55 21 impact these proceedings. And these recent events really
09:12:01 22 have been very active and in development over the last
09:12:03 23 month and a half or so. Most of this is addressed in a
09:12:06 24 notice that we filed with Your Honor, but there have also
09:12:08 25 been additional updates that we'd like to bring to your

09:12:11 1 attention.

09:12:14 2 So first, Your Honor, on June 28th the Justice
09:12:16 3 Department announced that a grand jury in the U.S.
09:12:19 4 District Court of Maryland indicted a former consultant.

09:12:23 5 THE COURT: Yes. I was aware of that.

09:12:25 6 MS. LOSEMAN: Dr. Wang. This is an individual
09:12:27 7 that Plaintiffs have described as having particular
09:12:30 8 relevance to the allegations in their complaint.

09:12:32 9 And then on July 1st the company disclosed that
09:12:35 10 it was cooperating with the DOJ and the SEC regarding
09:12:40 11 ongoing investigations into the company as well as two
09:12:43 12 senior employees. Further, based on new information --
09:12:48 13 newly obtained information provided to Cassava by the
09:12:51 14 SEC, the company created an ad hoc investigation
09:12:56 15 committee of the board of directors, comprised of
09:12:59 16 individual independent members of the board of directors,
09:13:03 17 to conduct an investigation concerning that newly
09:13:06 18 obtained information, as well as the events in the DOJ
09:13:10 19 indictment.

09:13:12 20 We provided an update to the Court on July 8th.
09:13:15 21 Since then, just two weeks ago, on July 17th, the company
09:13:18 22 disclosed that its chief executive officer,
09:13:22 23 Mr. Remi Barbier, resigned from the company that day.
09:13:26 24 That resignation is effective September 13th. And until
09:13:29 25 that day he is serving in a nonexecutive capacity,

09:13:33 1 without duties or responsibilities at the company. He
09:13:36 2 also resigned from the board of the company effective
09:13:39 3 immediately.

09:13:40 4 The company also announced that
09:13:42 5 Dr. Lindsay Burns resigned from the company, effective
09:13:45 6 immediately, and those two defendants in this case of
09:13:48 7 course are now represented by new counsel.

09:13:51 8 Cassava is still currently to this day actively
09:13:56 9 engaged in efforts to cooperate with the government in
09:13:59 10 its investigations.

09:14:00 11 Now, Plaintiffs have informed us that they
09:14:03 12 intend to move for leave to amend or supplement their
09:14:07 13 complaint to account for these very recent developments.
09:14:12 14 They further inform us that they intend -- they are
09:14:15 15 considering when to file that motion because we are very
09:14:18 16 much in the middle of developing a set of circumstances
09:14:22 17 that Plaintiffs contend are relevant to the claims in
09:14:26 18 their complaint.

09:14:27 19 And I'll get to the significance of that in a
09:14:30 20 moment. Let me now turn to the status of discovery and
09:14:33 21 what Defendants have been doing to engage in discovery
09:14:36 22 and its efforts to comply with the Court's scheduling
09:14:39 23 order.

09:14:40 24 And I'm going to try to address the items in
09:14:43 25 the sealed order that we obtained a photo of courtesy of

09:14:47 1 Plaintiffs' counsel last evening. So item 1 of the
09:14:50 2 sealed order, first and foremost, to address the
09:14:54 3 mischaracterization in Plaintiffs' submissions that
09:14:56 4 Defendants are somehow not fully participating in the
09:14:59 5 discovery process, by the time Gibson, Dunn appeared in
09:15:04 6 the case in February of this year, the company had
09:15:07 7 already produced over 300,000 documents to Plaintiffs.
09:15:12 8 With a substantial completion deadline of April 15th
09:15:15 9 around that time, we immediately undertook to review and
09:15:20 10 keep that ongoing review of documents that were
09:15:23 11 potentially responsive to Plaintiffs' nearly 140 requests
09:15:27 12 for production, keep that process moving.

09:15:29 13 We provided a comprehensive response to
09:15:33 14 Plaintiffs' proposed search parameters and agreed to
09:15:36 15 review numerous categories of documents on March 15th.

09:15:40 16 Over the course of those months, consistent
09:15:43 17 with that agreement, we completed a review of
09:15:45 18 approximately 100,000 additional documents. And by April
09:15:50 19 15th we produced the responsive, nonprivileged documents
09:15:54 20 identified from that review, approximately 20,000
09:15:57 21 documents.

09:15:57 22 But days before that substantial completion
09:16:01 23 deadline, so approximately April 10th, after we had sent
09:16:04 24 a comprehensive response to Plaintiffs' discovery demands
09:16:09 25 or proposal, on April 10th, a month later, Plaintiffs

09:42:47 1 schedule that Defendants were suggesting and not be.

09:42:50 2 THE COURT: That's a log. It's just a log.

09:42:51 3 It's not the documents. Am I right?

09:42:53 4 MR. LAVELLE: That's right.

09:42:58 5 MR. COSTA: Yeah. We'll complete that and

09:43:00 6 produce that within a couple of weeks.

09:43:02 7 THE COURT: All right. That will be fine.

09:43:03 8 MR. COSTA: That won't be affected by the stay.

09:43:05 9 THE COURT: All right. Thank you, Mr. Costa.

09:43:07 10 Okay. So I am not going hear any argument

09:43:10 11 today above and beyond where we are. But I do think it

09:43:14 12 was very important for us to get together and discuss

09:43:17 13 this so we can find out where we're going here. I mean,

09:43:24 14 I don't know whether this case will ultimately settle.

09:43:27 15 It may or may not. But I have to proceed on the theory

09:43:33 16 that it won't and that we're going to trial, and so we

09:43:44 17 have to prepare that way.

09:43:45 18 Now, is there anything else anybody else would

09:43:48 19 like to place on the record?

09:43:52 20 MR. DROSMAN: Just one question, Your Honor.

09:43:53 21 THE COURT: Sure. You want to --

09:43:59 22 MR. DROSMAN: My name is -- should I come up to
09:43:59 23 the podium?

09:43:59 24 THE COURT: No. You don't need to, but you

09:43:59 25 need to identify yourself.

09:43:59 1 MR. DROSMAN: Of course. Daniel Drosman on
09:44:01 2 behalf of Plaintiffs.

09:44:01 3 So I guess I just have one clarifying question
09:44:04 4 about the supplementation. You had said that the
09:44:09 5 plaintiffs, we should go ahead and put that on file, file
09:44:14 6 our supplemented complaint. And I guess my concern is,
09:44:16 7 because events have been coming sort of fast and
09:44:19 8 furiously, that we had thought it might be more prudent
09:44:23 9 to wait a little bit to see whether there are additional
09:44:27 10 shoes to drop before we file that supplementation.

09:44:31 11 Given that, would you still like us to file a
09:44:32 12 supplemented complaint now?

09:44:33 13 THE COURT: No. Maybe -- well, I'm sure the
09:44:36 14 defendants would like you to file it so they know what's
09:44:39 15 going on. But I think they have a pretty good idea.

09:44:43 16 MR. DROSMAN: We provided a draft of the
09:44:45 17 supplementation.

09:44:46 18 THE COURT: That's the kind of cooperation, by
09:44:50 19 the way, I like to see that I don't always see.

09:44:52 20 Listen, I'm old enough to have practiced law as
09:44:59 21 a trial lawyer when it was hide the ball, and that was
09:45:05 22 not -- that was not good. I remember spending my first
09:45:12 23 week after I got out of the military, being shipped off
09:45:16 24 to Chicago in the bowels of the Libby, McNeill and Libby
09:45:23 25 offices going through thousands of documents with a Bates

09:45:28 1 stamp, looking for hidden gems that might have been stuck
09:45:33 2 in some kind of a crevice somewhere in some stupid file
09:45:40 3 that meant nothing. That's what used to happen in the
09:45:43 4 old days. It did. Some of the older lawyers, they'll
09:45:46 5 remember that. And it was not pleasant.

09:45:51 6 I would look out the window at the Art
09:45:53 7 Institute of Chicago across the way, and I would think to
09:45:58 8 myself, wow, I sure wish I was over there. I don't know
09:46:01 9 how many Bates stamps I broke. Thank goodness we don't
09:46:08 10 have that anymore. That was awful.

09:46:11 11 So I will get an order out. What I would
09:46:18 12 like -- I usually do 100 percent my own orders. But,
09:46:22 13 because of the nature of this, I'm going to ask that
09:46:25 14 counsel prepare a draft order jointly for my
09:46:33 15 consideration. I normally don't do that. In fact, I
09:46:36 16 can't remember the last time I've done that. Never.

09:46:40 17 But in this case, because of the nature of it
09:46:45 18 and because you've had so many discussions among
09:46:48 19 yourselves that I'm not privy to, I'm a little concerned
09:46:52 20 that might step on something. And you just -- for
09:46:56 21 instance, you just brought a great point up. I would
09:46:59 22 actually prefer that you hold off until you met with the
09:47:04 23 discovery master. And by that time, which I'm hoping
09:47:08 24 will be within the next week or two -- and I may end up
09:47:12 25 extending this. I've said a month. It may end up being

09:47:16 1 a month and a half if you're unable to get to the
09:47:20 2 discovery master soon enough so that it makes a
09:47:22 3 difference. And I'll get that cue from the discovery
09:47:26 4 master, okay?

09:47:30 5 MR. DROSMAN: Thank you, Your Honor.

09:47:30 6 THE COURT: I think it will be Judge Bemporad.
09:47:32 7 He doesn't know about this. He's not going to be happy.
09:47:39 8 But he's the first guy I'm seeing. Those of you who
09:47:43 9 don't know him, he's a very tall guy, very imposing. I'm
09:47:49 10 six feet tall, and I'm looking up at him. I hope he
09:47:54 11 treats me well.

09:47:55 12 In any event, he's used to -- he was the
09:48:07 13 federal defender -- as some of you probably know, he was
09:48:13 14 the federal defender for the Western District of Texas.
09:48:15 15 But he knows civil law. He is very well educated. He
09:48:18 16 had a good legal education. And he is -- he is very,
09:48:23 17 very capable.

09:48:24 18 So I would like to have you submit a draft
09:48:32 19 order that you can both agree upon -- and if you can't
09:48:35 20 agree upon, let me know what you don't agree upon -- by,
09:48:43 21 say, Tuesday? Is that enough time?

09:48:46 22 MR. COSTA: Of course, Your Honor.

09:51:02 23 THE COURT: We can go off the record for just a
09:51:50 24 second.

09:51:50 25 (Discussion off the record)

1 **UNITED STATES DISTRICT COURT)**

2 **WESTERN DISTRICT OF TEXAS)**

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
6 proceedings in the above-entitled matter.

7 I certify that the transcript fees and format comply with
8 those prescribed by the Court and Judicial Conference of the
9 United States.

10 WITNESS MY OFFICIAL HAND this the 14th day of August 2024.

11

12 /S/ Arlinda Rodriguez
13 Arlinda Rodriguez, Texas CSR 7753
14 Expiration Date: 10/31/2025
15 Official Court Reporter
16 United States District Court
17 Austin Division
18 501 West 5th Street, Suite 4152
19 Austin, Texas 78701
20 (512) 391-8791

21

22

23

24

25

ARLINDA L. RODRIGUEZ, OFFICIAL COURT REPORTER
U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS (AUSTIN)